

CHAPTER 292

H.B. No. 524

AN ACT

relating to the abolition of the Texas Amusement Machine Commission and the transfer of certain functions performed by that commission to the office of the comptroller of public accounts.

*Be it enacted by the Legislature of the State of Texas:*

SECTION 1. Subdivision (7), Article 8801, Revised Statutes, is amended to read as follows:

(7) The term "comptroller" [~~"commission"~~] means the *comptroller of public accounts* [~~Texas Amusement Machine Commission~~].

SECTION 2. Article 8802, Revised Statutes, is amended to read as follows:

Art. 8802. AMOUNT OF TAX. (1) Every "owner", save an owner holding an import license and holding coin-operated machines solely for re-sale, who owns, controls, possesses, exhibits, displays, or who permits to be exhibited or displayed in this State any "coin-operated machine" shall pay, and there is hereby levied on each "coin-operated machine", as defined herein in Article 8801 [~~13.01~~], except as are exempt herein, an annual occupation tax of \$30.00, except that the annual tax on each coin-operated machine that is designed exclusively for showing motion pictures is \$1,500.00. The tax shall be paid to the *comptroller* [~~commission~~] by cashier's check or money order. *The annual tax levied by this chapter may be collected by the comptroller on a quarterly basis. The*

*comptroller may establish procedures for quarterly collection and set due dates for the tax payments. The tax due from the owner of a coin-operated machine first owned, controlled, possessed, exhibited, or displayed in this State later than March 31 shall be prorated on a quarterly basis, with one-fourth of the annual tax due for each quarter or portion of a quarter remaining in the calendar year. No refund or credit of the annual tax levied by this chapter may be allowed to any owner who ceases the exhibition or display of any coin-operated machine prior to the end of any calendar year.*

(2) Provided that the first money taken from each coin-operated machine each calendar year shall be paid to the owner to reimburse the payment of that year's annual occupation tax levied above and those levied by any city or county. No owner shall agree or contract or offer to agree to contract to waive this reimbursement either directly or indirectly. No owner shall agree or contract with a bailee or lessee of a coin-operated machine to compensate said bailee or lessee in excess of fifty percent (50%) of the gross receipts of such machine after the above reimbursement has been made. In addition to all other penalties provided by law the *comptroller* [commission] shall revoke any license held under Article 8817 [13.17] by any person who violates this Subsection.

(3) The *comptroller* [commission] may provide a duplicate permit if a valid permit has been lost, stolen, or destroyed. The fee for a duplicate permit is \$2.

SECTION 3. Article 8804, Revised Statutes, is amended to read as follows:

Art. 8804. PUBLIC NUISANCE. Every coin-operated machine subject to the payment of the tax levied herein, and upon which the said tax has not been paid as provided herein, is hereby declared to be a public nuisance, and may be seized and destroyed by the *comptroller* [commission], an agent of the *comptroller* [its agents], or any law enforcing agency of this State as in such cases made and provided by law for the seizure and destruction of common nuisances.

SECTION 4. Article 8805, Revised Statutes, is amended to read as follows:

Art. 8805. INJUNCTION; VENUE; PAYMENT OF TAX AS CONDITION PRECEDENT; RECORDS AND REPORTS. (1) Any person who shall invoke the power and remedies of injunction against the *Comptroller* [commission] to restrain or enjoin it from enforcement of the collection of the tax levied herein upon any grounds for which an injunction may be issued, shall file such proceedings in a court of competent jurisdiction in Travis County, Texas, and venue for such injunction is hereby declared to be in Travis County, Texas.

(2) Before any restraining order or injunction shall be granted against the *Comptroller* [commission] to restrain or enjoin the collection of the taxes levied herein the applicant therefor shall pay into the suspense account of the State Treasury all taxes, fees, and assessments then due by him to the State and the application for restraining order or injunction shall reflect said fact of payment under oath of the applicant, his agent, or attorney. Provided that said applicant shall keep for the inspection at all times of the Attorney General and the *Comptroller* [commission] or their authorized representatives, a complete, itemized record maintained in accordance with generally accepted auditing and accounting practices, showing all coin-operated vending machines possessed and in operation during the pendency of such restraining order or injunction. Such record shall show the make and kind of machine, the serial number, the date such machine was put in operation, and the location and serial number of each and every machine possessed or operated within the State. Provided further that said applicant shall make and file with the *Comptroller* [commission] daily, excluding Sundays and legal holidays, a report on a form to be prescribed by the *Comptroller* [commission], showing the ownership, make and kind, and the serial number of every such machine operated by said applicant within this State. Said report shall also show the county, city, and location within the city and county of each machine and the date such machine was placed in operation. In the event the location or ownership of any machine is changed such information shall be included in said report. Said application and temporary injunction or restraining order shall be immediately dismissed and dissolved after hearing if said applicant fails, at any time before the case shall have been finally disposed of by the court of last resort, to keep the records or make and file the reports required herein or to pay daily, excluding Sundays

and legal holidays, into the suspense account of the Treasurer all taxes, fees and assessments due and thereafter becoming due, and such taxes shall be paid before such machines are operated, exhibited or displayed for operation within this State. The *Comptroller* [~~commission~~], or an authorized representative of the *Comptroller* [~~its authorized representatives~~], may file in the court granting such injunction an affidavit that said applicant has failed to comply with the provisions of this Chapter or has violated the same. Upon the filing of said affidavit, the clerk of said court shall issue notice to the said applicant to appear before such court upon the date named therein, which shall be within five (5) days from service of such notice or as soon thereafter as the court can hear the same, to show cause why such injunction should not be dismissed, which notice shall be served by the sheriff of the county in which applicant resides or any other peace officer in this State. In the event the injunction is finally dissolved or dismissed, all taxes, fees and assessments, paid into the suspense account of the Treasurer under the provisions of this Chapter shall be paid to the funds to which such taxes, fees and assessments are allocated. If the final judgment maintains the right of applicant to a permanent injunction to prevent the collection of such taxes the funds so deposited shall be refunded by the Treasurer to said applicant.

(3) No person, firm, association or corporation required to pay the taxes levied herein to the State may receive or take advantage of any benefit of any restraining order or injunction against the *Comptroller* [~~commission~~], to restrain the collection of the tax levied herein except such person, firm, association or corporation as may have applied for said injunction. All other persons not securing an injunction shall pay to the *Comptroller* [~~commission~~] all taxes, fees, and assessments due by him under the provisions of this Chapter and said restraining order or injunction shall in no way interfere with or impair the power of the *Comptroller* [~~commission~~] to collect and enforce the payment of the taxes, fees, and assessments involved in any litigation from taxpayers not parties to the restraining order or injunction. Provided further, that no court shall entertain or hear any restraining order or injunction nor shall any restraining order or injunction be granted in behalf of any class or group unless and until each and every member of such class and/or group shall have been made a party to the cause of action, and shall have paid or deposited the taxes as hereinbefore provided.

SECTION 5. Article 8806, Revised Statutes, is amended to read as follows:

Art. 8806. ATTACHMENT OF PERMIT TO MACHINE. Provided further, the permit issued by the *comptroller* [~~commission~~] to evidence the payment of the tax levied herein shall be securely attached to the machine in a manner that will require continued application of steam and water to remove the same.

SECTION 6. Article 8807, Revised Statutes, is amended to read as follows:

Art. 8807. RULES AND REGULATIONS; REVOCATION OF LICENSES OR PERMITS. (1) The *Comptroller* [~~commission~~] may make and publish rules and regulations, not inconsistent with this Chapter or the other laws or the Constitution of this State or of the United States, for the enforcement of the provisions of this Chapter and the collection of the revenues hereunder.

(2) If any individual, company, corporation or association who owns, operates, exhibits or displays any coin-operated machine in this State, shall violate any provision of this Chapter or any rule and regulation promulgated hereunder, the *Comptroller* [~~commission~~] shall investigate the violation, make findings of fact, and may recommend to the Attorney General that a license, permit, or registration certificate be revoked. If the licenses, permits, or registration certificate of any individual, company, corporation, or association owning, operating or displaying coin-operated machines in this State is revoked, such individual, company, corporation, or association shall not operate, display or permit to be operated or displayed such machines until the licenses, permits, or registration certificates are reinstated or until new licenses, permits, or registration certificates are granted.

SECTION 7. Article 8808, Revised Statutes, is amended to read as follows:

Art. 8808. PERMITS; COLLECTION OF TAX; PAYMENT OF EXPENSES. The *comptroller* [~~commission~~] shall collect, and issue permits for the payment of the tax levied herein and to employ all the agencies of the law available to him for the

enforcement of the provisions of this Chapter. Provided that Twenty-five Thousand Dollars (\$25,000) of the funds derived under the provisions of this Chapter shall be deposited annually to the credit of the General Revenue Fund *and allocated to the comptroller* as payment for the services of the *comptroller* [commission] and other State agencies in the enforcement of this Chapter.

SECTION 8. Article 8810, Revised Statutes, is amended to read as follows:

Art. 8810. RECORDS. Every "owner" of one or more coin-operated machines in this State shall keep for a period of two (2) years for the inspection at all times by the Attorney General and the *Comptroller* [commission], or their authorized representatives, a complete, itemized record maintained in accordance with accepted auditing and accounting practices of each and every such machine purchased, received, possessed, handled, exhibited or displayed in this State. Such record shall be kept at a permanent address which address shall be designated on the application for permit and shall include the following information: The kind of each such machine, the date acquired or received in Texas, the date placed in operation, the location or locations of each machine including county, city, street and/or rural route number, the date of each and every change in location, the name and complete address of each and every operator, the full name and address of the owner, or if other than an individual the principal officers or members thereof and their addresses. Such information shall be shown completely and separately for each and every machine.

SECTION 9. Article 8811, Revised Statutes, is amended to read as follows:

Art. 8811. VIOLATIONS OF ACT; PENALTY; SUIT TO RECOVER PENALTY. If any "owner" of a coin-operated machine within this State shall (a) permit any coin-operated machine under his control to be operated, exhibited or displayed within this State without said permit being attached thereto, or (b) if any person shall exhibit, display or have in his possession within this State any coin-operated machine without having annexed or attached thereto a permit issued by the *Comptroller* [commission] showing the payment of the tax due thereon for the current year, or (c) if any person required to keep records of coin-operated machines in this State shall falsify such records, or (d) shall fail to keep such records, or (e) shall refuse or fail to present such records for inspection upon the demand of the *Comptroller* [commission] or an [its] authorized *representative of the Comptroller* [representatives], or (f) if any person in this State shall use any artful device or deceptive practice to conceal any violation of this Chapter, or (g) mislead the *Comptroller* [commission] or an [its] authorized *representative of the Comptroller* [representatives] in the enforcement of this Chapter, or (h) if any person in this State shall fail to comply with the provisions of this Chapter, or violate the same, or (i) if any person in this State shall fail to comply with the rules and regulations promulgated by the *Comptroller* [commission], or violate the same, he shall forfeit to the State as a penalty, the sum of not less than Five Dollars (\$5) nor more than Five Hundred Dollars (\$500). Each day's violation shall constitute a separate offense and incur another penalty, which, if not paid shall be recovered in a suit by the Attorney General of this State in a court of competent jurisdiction in Travis County, Texas, or any court having jurisdiction.

SECTION 10. Article 8812, Revised Statutes, is amended to read as follows:

Art. 8812. OFFENSES; PENALTY. (a) If any person shall exhibit, display or have in his possession within this State any coin-operated machine without having annexed or attached thereto a valid permit issued by the *comptroller* [commission] showing the payment of the tax due thereon for the current year, or (b) if any person required to keep records of coin-operated machines in this State shall falsify such records or (c) shall fail to keep such records, or (d) shall refuse or fail to present such records for inspection upon the demand of the *comptroller* [commission] or an [its] authorized *representative of the comptroller* [representatives], or (e) if any person in this State shall use any artful device or deceptive practice to conceal any violation of this Chapter, or (f) mislead the *comptroller* [commission] or an [its] authorized *representative of the comptroller* [representatives] in the enforcement of this Chapter, or (g) if any person in this State shall fail to comply with the provisions of this Chapter, or violate the same, or (h) if any person in this State shall fail to comply with the rules and regulations promulgated by the *comptroller* [commission], or violate the same, he shall be guilty of a Class C misdemeanor.

SECTION 11. Article 8813, Revised Statutes, is amended to read as follows:

Art. 8813. SEALING MACHINE TO PREVENT OPERATIONS; PENALTY FOR BREAKING SEAL. Provided that the *comptroller* [~~commission~~] or *an* [~~its~~] authorized *representative of the comptroller* [~~representatives~~], may seal any such machine upon which the tax has not been paid in a manner that will prevent further operation. Whoever shall break the seal affixed by *the comptroller* [~~said commission~~] or *an* [~~its~~] authorized *representative of the comptroller* [~~representatives~~], or whoever shall exhibit or display any such coin-operated machine after said seal has been broken or shall remove any coin-operated machine from location after the same has been sealed by the *comptroller* [~~commission~~] shall be guilty of a misdemeanor and upon conviction shall be punished as set out in Article 8812 [~~13.12 of this Chapter~~]. The *comptroller* [~~commission~~] shall charge a fee of \$25.00 for the release of any coin-operated machine sealed for nonpayment of tax. The fee shall be paid to the *comptroller* [~~commission~~] by cashier's check or money order.

SECTION 12. Section 3, Article 8817, Revised Statutes, is amended to read as follows:

Sec. 3. ADMINISTRATION. The *Comptroller* [~~commission~~] shall administer this Article. The *Comptroller* [~~commission~~] may initiate investigations, hearings, and take other necessary measures to ensure compliance with the provisions of this Article or to determine whether violations may exist. If the *Comptroller* [~~commission~~] finds evidence of a violation, *the Comptroller* [~~it~~] shall notify the Attorney General who may institute a civil action in the name of the *Comptroller* [~~commission~~] against a person who violates a provision of this Article. If the *Comptroller* [~~commission~~] finds evidence of violation of penal provisions, *the Comptroller* [~~it~~] shall present it to the District or County Attorney of the county wherein such violation occurred.

SECTION 13. Section 4, Article 8817, Revised Statutes, is amended to read as follows:

Sec. 4. POWERS OF COMPTROLLER [~~COMMISSION~~]. In addition to its other authority, the *Comptroller* [~~commission~~] may, for the purpose of administering this Article,

- (1) prescribe all necessary regulations and rules to ensure that all persons affected by this Article are afforded due process of law;
- (2) hold hearings and prescribe rules of procedure and evidence for the conduct of hearings;
- (3) issue licenses;
- (4) prescribe the procedure for registration of music and skill or pleasure coin-operated machines and the method of securely attaching registration stamps;
- (5) disclose confidential information to appropriate officials; and
- (6) prescribe the form and content of
  - (a) license applications;
  - (b) registration certificates;
  - (c) tax permits;
  - (d) reports concerning the location of coin-operated machines; and
  - (e) reports of the consideration of each party to contracts concerning the placement of coin-operated machines in establishments owned by a person other than the licensee.

SECTION 14. Section 4A, Article 8817, Revised Statutes, is amended to read as follows:

Sec. 4A. DISPOSITION OF FEES. Fees received by the *Comptroller* [~~commission~~] under this article shall be deposited in the State Treasury to the credit of the General Revenue Fund. *One-half of the fees deposited under this article are allocated to the Comptroller for the administration and enforcement of this chapter.*

SECTION 15. Section 5, Article 8817, Revised Statutes, is amended to read as follows:

Sec. 5. DELEGATION OF AUTHORITY. The *Comptroller* [~~commission~~] may delegate to an authorized representative any authority given to *the Comptroller* [~~it~~] by this Article, including the conduct of investigations and the holding of hearings.

SECTION 16. Section 6, Article 8817, Revised Statutes, is amended to read as follows:

Sec. 6. AGENCY COOPERATION. All state agencies are directed to cooperate with the *Comptroller* [commission] in [its] investigatory functions under this Article, and shall provide the *Comptroller* [it] access to their relevant records and reports including those declared or designated as confidential by other law.

SECTION 17. Section 7, Article 8817, Revised Statutes, is amended to read as follows:

Sec. 7. CONFIDENTIALITY; PENALTY FOR DISCLOSURE. (1) All information derived from books, records, reports, and applications required to be made available under this Article to the *Comptroller* [commission] or the Attorney General is confidential unless specifically designated a public record, and may be used only for the purpose of enforcing the provisions of this Article.

(2) Any employee of the *Comptroller* [commission] or Attorney General who discloses confidential information obtained from the administration of this Article to an unauthorized person is guilty of a Class C misdemeanor.

SECTION 18. Section 7A, Article 8817, Revised Statutes, is amended to read as follows:

Sec. 7A. CONSUMER INFORMATION. (1) The *Comptroller* [commission] shall prepare information of consumer interest describing the regulatory functions of the *Comptroller* [commission] relating to coin-operated machines and describing the *Comptroller* [commission] procedures by which consumer complaints relating to coin-operated machines are filed with and resolved by the *Comptroller* [commission]. The *Comptroller* [commission] shall make the information available to the general public and appropriate state agencies.

(2) Each written contract between a licensed owner and an operator in this state shall contain the name, mailing address, and telephone number of the *Comptroller* [commission].

SECTION 19. Section 9(b), Article 8817, Revised Statutes, is amended to read as follows:

(b) An application for the renewal of a license must be made to the *Comptroller* [commission] before December 1 of each year.

SECTION 20. Section 10, Article 8817, Revised Statutes, is amended to read as follows:

Sec. 10. TEMPORARY EXTENSION OF LICENSE. When a license issued under this Article expires because of the death of an individual licensee, or the dissolution of any other licensee, or upon conditions involving receivership or bankruptcy, the *Comptroller* [commission], except for good cause shown, shall permit the successor in interest to operate the business under the same license through December 31st of the year. The *Comptroller* [commission] shall give this permission in writing upon certification by the County Judge of the county in which the business is located that the person requesting the extension is the successor in interest. The extended license is subject to suspension or cancellation as is any other license issued under this Article. An original license application is necessary upon expiration of the extension.

SECTION 21. Subsections (2), (5), and (8), Section 12, Article 8817, Revised Statutes, are amended to read as follows:

(2) The application shall designate a single individual who is responsible for keeping a record and reporting to the *Comptroller* [commission] the following information regarding each music or skill or pleasure coin-operated machine owned, possessed or controlled by the licensee:

- (a) the make, type, and serial number of machine;
- (b) the date put in operation;
- (c) the dates of the first, and the most recent registration of the machine;
- (d) the specific location of each machine;
- (e) any change in ownership of a machine.

(5) The *Comptroller* [commission] may require any other pertinent information to be included in the application.

(8) The application shall designate an office in this state where the applicant proposes to maintain the records which he is required to maintain by this Article, otherwise by law, or by rule or regulation of the *Comptroller* [commission].

SECTION 22. Section 13, Article 8817, Revised Statutes, is amended to read as follows:

Sec. 13. FEE WITH APPLICATION. The application must be accompanied by the annual license fee in the form of a cashier's check or money order payable to the *Comptroller* [commission].

SECTION 23. Section 14(1), Article 8817, Revised Statutes, is amended to read as follows:

(1) The licensee shall keep records and make reports to the *Comptroller* [commission] of the information specified in Subsection (2) of Section 12 of this Article at intervals specified by the *Comptroller* [commission], and upon demand by the *Comptroller* [commission]. He shall immediately notify the *Comptroller* [commission] in writing of any change in ownership of the licensed business.

SECTION 24. Subsections (4) and (6), Section 16, Article 8817, Revised Statutes, are amended to read as follows:

(4) The *Comptroller* [commission] may not refund any part of a license fee after the license is issued. In the event a license is not issued, the *Comptroller* [commission] may retain \$25 to cover administrative costs, and may refund the balance.

(6) A person must renew an unexpired license by paying to the *Comptroller* [commission] before the expiration date of the license the annual license fee. If a person's license has been expired for not more than 90 days, the person must renew the license by paying to the *Comptroller* [commission] a fee that is 1-½ times the annual license fee. If a person's license has been expired for more than 90 days but less than two years, the person must renew the license by paying to the *Comptroller* [commission] a fee that is two times the annual license fee. If a person's license has been expired for two years or more, the person may not renew the license. The person must obtain a new license by complying with the requirements and procedures for obtaining an original license.

SECTION 25. Subsections (2), (3), (4), (5), and (6), Section 16A, Article 8817, Revised Statutes, are amended to read as follows:

(2) Machines which are exhibited by a nonlicensed owner exempt under this section must be registered with the *Comptroller* [commission]. The owner shall obtain a registration certificate each year. The registration certificate shall show the name and address of the location of each machine and shall certify that the machine has a valid tax stamp affixed to it. The owner shall obtain his registration certificate by filing sworn application.

(3) Each time the location of a machine is changed, the owner of the registration certificate shall notify the *Comptroller* [commission] of the change by filing an amendment to the registration certificate within 10 days of the change.

(4) The fee for registration of machines affected by this section is \$50 for the business entity in which the owner's machines are exhibited. The fee shall be paid to the *Comptroller* [commission] by cashier's check or money order.

(5) An application for the renewal of a registration certificate must be made to the *Comptroller* [commission] before December 1 of each year.

(6) A person must renew an unexpired registration for a machine by paying to the *Comptroller* [commission] before the expiration date of the registration the required registration fee. If a person's registration has been expired for not more than 90 days, the person must renew the registration by paying to the *Comptroller* [commission] a fee that is 1-½ times the registration fee. If a person's registration has been expired for more than 90 days but less than two years, the person must renew the registration by paying to the *Comptroller* [commission] a fee that is two times the registration fee. If a person's registration has been expired for two years or more, the person may not renew

the registration. The person must obtain a new registration by complying with the requirements and procedures for obtaining an original registration.

SECTION 26. Section 17(1), Article 8817, Revised Statutes, is amended to read as follows:

(1) No person other than the *Comptroller* [~~commission~~] may intentionally remove a current registration stamp from a music or skill or pleasure coin-operated machine.

SECTION 27. Section 18, Article 8817, Revised Statutes, is amended to read as follows:

Sec. 18. LICENSE AS CONSENT TO ENTRY. Acceptance of a license issued under this Article constitutes consent by the licensee that the *Comptroller* [~~commission~~] or any peace officer may freely enter upon the licensed business premises during normal business hours for the purpose of ensuring compliance with this Article.

SECTION 28. Section 19, Article 8817, Revised Statutes, is amended to read as follows:

Sec. 19. GROUNDS FOR REFUSAL, SUSPENSION, OR REVOCATION OF LICENSE. (1) The *Comptroller* [~~commission~~] may not issue a general business or import license for a business under this Article if *the Comptroller* [~~it~~] finds that the applicant:

(a) has been finally convicted of a felony in a court of competent jurisdiction during the five years preceding the filing of the application; or

(b) has been on probation or parole as a result of a felony conviction during the two years preceding the filing of the application.

(2) The *Comptroller* [~~commission~~] may not issue or renew a license for a business under this Article, and shall suspend for any period of time, or cancel a license, if *the Comptroller* [~~it~~] finds that the applicant or licensee is indebted to the State by judgment for any fees, costs, penalties, or delinquent taxes.

(3) The *Comptroller* [~~commission~~] may not issue or renew a license for a business pursuant to the terms of this Article if the applicant does not designate and maintain an office in this state or if the applicant does not permit inspection by the *Comptroller* [~~commission~~] of all records which the applicant or licensee is required to maintain.

SECTION 29. Section 20, Article 8817, Revised Statutes, is amended to read as follows:

Sec. 20. GROUNDS FOR REPRIMAND OF LICENSEE OR SUSPENSION OR REVOCATION OF LICENSE. (1) A licensee may be reprimanded or a license issued pursuant to the authority of this Article may be suspended or revoked if:

(a) the licensee has intentionally violated a provision of this Article or a regulation promulgated pursuant to the authority of this Article;

(b) the licensee has intentionally failed to answer a question, or intentionally made a false statement in, or in connection with, his application or renewal;

(c) the licensee extends credit without registering his intent to do so with the consumer credit commission;

(d) the licensee uses coercion to accomplish a purpose or to engage in conduct regulated by the *Comptroller* [~~commission~~];

(e) a contract or agreement between the licensee and a location owner contains a restriction, of any kind and to any degree, on the right of the location owner to purchase, agree to purchase, or use a product, commodity, or service not regulated under the terms of this Article; or

(f) failure to suspend or revoke the license would be contrary to the intent and purpose of this Article.

(2) The *Comptroller* [~~commission~~] shall conduct a hearing to ascertain whether a licensee has engaged in conduct which would be grounds for revocation or suspension. The *Comptroller* [~~commission~~] shall make findings of fact, and, if the *Comptroller* [~~commission~~] determines that grounds for revocation exist, the *Comptroller* [~~commission~~] shall file those findings with the Attorney General. The Attorney General upon receipt of the record may institute an action to impose the penalties provided by [~~this Act in~~] Article



8811 [13.11] or to revoke or suspend the license. The action shall be instituted in a district court in the county of the licensee's place of business.

SECTION 30. Section 20A, Article 8817, Revised Statutes, is amended to read as follows:

Sec. 20A. COMPLAINTS. (1) The *Comptroller* [commission] shall maintain an information file about each complaint filed with the *Comptroller* [commission] relating to a licensee.

(2) If a written complaint is filed with the *Comptroller* [commission] relating to a licensee, the *Comptroller* [commission], at least as frequently as quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless the notification would jeopardize an undercover investigation.

SECTION 31. Section 22, Article 8817, Revised Statutes, is amended to read as follows:

Sec. 22. NOTICE AND HEARING. (1) An applicant or licensee is entitled to at least ten days' notice and a hearing in the following instances:

- (a) after his original application for a license has been refused;
- (b) before his application for a renewal of a license may be refused;
- (c) before the *Comptroller* [commission] may file a recommendation of revocation, denial, or other sanction, with the Attorney General.

(2) Notice of hearing for refusal, cancellation, or suspension may be served personally by the *Comptroller* [commission] or an [its] authorized representative or sent by United States certified mail addressed to the applicant or licensee at his last known address. In the event that notice cannot be effected by either of these methods after due diligence, the *Comptroller* [commission] may prescribe any reasonable method of notice calculated to inform a person of average intelligence and prudence in the conduct of his affairs. The *Comptroller* [commission] shall publish notice of a hearing in a newspaper of general circulation in the area in which the licensee conducts his business activities.

SECTION 32. Section 23, Article 8817, Revised Statutes, is amended to read as follows:

Sec. 23. NOTICE OF *COMPTROLLER'S* [COMMISSION'S] ORDER. (1) Any order refusing an application or renewal application shall state the reasons for refusal, and a copy of the order shall be delivered immediately to the applicant or licensee.

(2) An order recommending cancellation or suspension of a license shall state the reasons for the cancellation or suspension, and a copy of the order shall be delivered immediately to the licensee.

(3) Delivery of the *Comptroller's* [commission's] recommendation of refusal, cancellation, or suspension may be given by

- (a) personal service upon an individual applicant or licensee;
- (b) personal service upon any officer or director or partner or trustee or receiver, as the case may be;
- (c) personal service upon the person in charge of the business premises, temporarily or otherwise, of the applicant or licensee;
- (d) sending such notice by United States certified mail addressed to the business premises of the applicant or licensee;
- (e) posting notice upon the outside door of the business premises of the applicant or licensee.

(4) Notice is complete upon performance of any of the above.

SECTION 33. Section 24, Article 8817, Revised Statutes, is amended to read as follows:

Sec. 24. REVIEW OF *COMPTROLLER'S* [COMMISSION] ACTION. (1) Appeal by an affected person from all actions of the *Comptroller* [commission] other than a recommendation to the Attorney General for the revocation of a license as provided in Article 8807(2) [13.07(2)] and [Article 13.17] Section 20(2) of this Article [Act] or from

denial of requested action shall be to a District Court of the county of the licensee's place of business. The review shall be conducted by the court and shall be confined to the record. If the record is found to be incomplete, the court may order that additional evidence be taken before the *Comptroller* [commission]. The *Comptroller* [commission] may modify *the* [its] findings and *the* decision or order by reason of the additional evidence and shall file such evidence and any modifications, new findings, decisions, or orders with the court. In cases of alleged irregularities in procedure before the *Comptroller* [commission], not shown in the record, proof thereon may be taken in the court.

(2) The court shall not substitute its judgment for that of the *Comptroller* [commission] as to the weight of the evidence on questions of fact committed to *the* [commission] discretion of *the Comptroller*. The court may affirm the decision of the *Comptroller* [commission] in whole or in part; the court shall reverse or remand the case for further proceedings if substantial rights of the appellant have been prejudiced because the *Comptroller's* [commission's] findings, inferences, conclusion, or decisions are:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the *Comptroller* [commission];
- (c) made upon unlawful procedure;
- (d) affected by other error of law;
- (e) not reasonably supported by substantial evidence in view of the reliable and probative evidence in the record as a whole; or
- (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

SECTION 34. Section 25, Article 8817, Revised Statutes, is amended to read as follows:

Sec. 25. APPEALS. Appeal from any final judgment of the District Court may be taken by any party, including the *Comptroller* [commission], in the manner provided for in civil actions generally; provided that the *Comptroller* [commission] may not appeal a decision on motion of the Attorney General to revoke a license.

SECTION 35. Section 26(4)(e), Article 8817, Revised Statutes, is amended to read as follows:

(e) At such times as the Consumer Credit Commissioner may deem necessary, or at the request of the *Comptroller* [commission] or the Attorney General, the Consumer Credit Commissioner, or his duly authorized representative, may make an examination of the place of business of each licensee hereunder, and may inquire into and examine the transactions, books, accounts, papers, correspondence, or records of such licensee insofar as they pertain to the extensions of credit regulated by this Section. In the course of such examinations, the Consumer Credit Commissioner or his duly authorized representative shall have free access to the office, place of business, files, safes and vaults of such licensee, and shall have the right to make copies of such books, accounts, papers, correspondence and records. The Consumer Credit Commissioner or his duly authorized representative may, during the course of such examination, administer oaths and examine any person under oath upon any subject pertinent to any matter about which the Commissioner is authorized or required by this Section to consider, investigate or secure information. Any licensee who shall fail or refuse to let the Consumer Credit Commissioner or his duly authorized representative examine or make copies of such books or other relative documents shall thereby be deemed in violation of this Section. The information obtained in the course of such examination shall be confidential. Each licensee shall pay to the Consumer Credit Commissioner an amount assessed by the Commissioner to cover the direct and indirect costs of such examination, including a proportionate share of general administrative expenses, which amount shall be retained and held by the Consumer Credit Commissioner, and no part of such fee shall ever be paid into the General Revenue Fund of this State. All expenses incurred by the Consumer Credit Commissioner in conducting such examinations shall be paid only from such fees, and no such expense shall ever be charged against the funds of this State.

**Ch. 292, § 36**

**70th LEGISLATURE—REGULAR SESSION**

SECTION 36. Chapter 587, Acts of the 62nd Legislature, Regular Session, 1971 (Article 4413(41), Vernon's Texas Civil Statutes), is repealed.

SECTION 37. (a) This Act takes effect September 1, 1987.

(b) All records and other property belonging to the Texas Amusement Machine Commission are transferred to the comptroller of public accounts on the effective date of this Act.

SECTION 38. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed by the House on April 13, 1987, by the following vote: revenue dedication: Yeas 109, Nays 28, 2 present, not voting; remainder of bill: non-record vote. Passed by the Senate on May 29, 1987, by a viva-voce vote.

Approved June 11, 1987.

Effective Sept. 1, 1987.